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## **BOARD OF COUNTY COMMISSIONERS**

### **YELLOWSTONE COUNTY, MONTANA**

### **THURSDAY, MARCH 29, 2012**

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**SUBJECT:** Zone Change #627, Text Amendment – Correctional Facilities – 27-201; 27-305; and 27-306

**THROUGH:** Candi Beaudry, AICP, Planning Director

**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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### **REQUEST**

This is a zone change that will amend several sections of the Unified Zoning Regulations for Billings and Yellowstone County regarding definitions for community residential facilities and regulating where correctional facilities – public and private – may or may not be located. The proposed amendments to definitions will update the regulations to mirror the state law definitions for community residential facilities and eliminate a conflicting definition of rehabilitation centers, a definition that dates to 1972. The amendments to Sections 27-305 and 27-306 will change where public and private correctional facilities may be located. City Council Member Ulledalen initiated this amendment on April 9, 2007, and the Council approved the initiative. The City and County Zoning Regulations are unified and these standards should apply within the zoning area outside the city limits. The City Zoning Commission conducted a public hearing on March 6, 2012 and recommended approval to the City Council. The City Council will conduct a public hearing on March 26, 2012. The County Zoning Commission conducted a public hearing on March 12, 2012, and is forwarding a recommendation to the Board of County Commissioners of approval on a 5-0 vote.

### **REASONS**

#### **Community Residential Facilities**

The current code has been amended several times over the years to address specific requirements of state law for community residential facilities. The state law protects these uses because they provide essential home-based services for individuals that may be disabled or provide other essential home-based services for children or older persons. These facilities are protected under MCA 76-2-411 and 76-2-412 from being “zoned out” of residential areas or more stringent requirements placed on where such facilities can be located. State law does allow communities to require a conditional use (special review) for facilities that provide services to more than 8 individuals. While state law has been updated periodically, the local regulations and definitions have not kept pace. The amendments will align our local regulations with state law.

The zoning regulations contain a definition that pre-dates the state law definitions in this area. The code currently has a definition of a “rehabilitation center” that overlaps and does not align with state law definitions and has caused confusion for enforcement and administration of the code. The definition of a “rehabilitative center” has been in the zoning code since 1972. The definition of a “rehabilitative center” remained in the code after definitions for community residential facilities were added in 1987. The definition was amended to remove any reference to

“drug or alcohol addiction” in 1992 along with changes to the definition of a “community residential facilities”. (Ordinance 92-4896) No other changes have been made since 1992. The amendment proposes to delete this definition from the code since it is duplicative and confusing.

### **Correctional Facilities – Public and Private**

In 2006 and 2007, the City Council was concerned that public and private correctional facilities were being unnecessarily located in one zoning district – the South 27<sup>th</sup> Street Corridor. The City Council was concerned that a major entryway to the city was being over-utilized for these institutional uses, when other districts were available and perhaps better suited for these uses. Two sections of the Commercial and Industrial Uses matrix found in 27-306 regulate where public and private correctional facilities may be allowed. The current code allows private correctional facilities (SIC 8744) by special review approval in 3 districts – South 27<sup>th</sup> Street Corridor, Public and Controlled Industrial (CI). Similarly, the code allows public correctional facilities (SIC 9223) by special review approval in the South 27<sup>th</sup> Street Corridor, Public and CI. Any public correctional facilities can – under provision of MCA 76-2-402 (Land Use Contrary to Zoning) – be located in any zoning district by conducting a public hearing before the Board of Adjustment prior to initiating the project.

**76-2-401. Definitions.** As used in [76-2-402](#), the following definitions apply:

- (1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.
- (2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

**76-2-402. Local zoning regulations -- application to agencies.** Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

- (1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.
- (2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

The proposed amendments would eliminate public or private correctional facilities as a special review use in the South 27<sup>th</sup> Street Corridor and eliminate public correctional facilities from the CI zone. Existing private correctional facilities could continue in their current locations and could be re-built if damaged or destroyed. However, the amendment would not allow expansion of those existing private correctional facilities or the location of any new private correctional facilities in this zoning district. Halfway houses including supervised release programs operated by organizations such as Alternatives, Inc. would still be an allowed use in all Commercial and Industrial zoning districts. These uses are classified in SIC 83 – Social Services. Private correctional facilities are distinct and separate from these uses and would not be allowed in the South 27<sup>th</sup> Street Corridor by this amendment.

### **RECOMMENDATION**

The Zoning Commission voted 5-0 to recommend approval of Zone Change #627.

### **ZONING COMMISSION PUBLIC HEARING AND DISCUSSION**

The Zoning Commission conducted a public hearing on this application on March 12, 2012. Planning staff provided testimony on the proposed text amendment. There was no other public testimony.

Chairman Dennis Cook called for questions and discussion by the members of the Commission. Member Joan Hurdle stated it was good policy and law to have state laws and local regulations be conforming. There were no other questions and the Zoning Commission moved to recommend approval to the Board of County Commissioners on a 5-0 vote.

**RECOMMENDATION**

The Zoning Commission recommends approval of Zone Change #627 on a 5-0 vote.

**ATTACHMENTS**

Attachment A: Draft Resolution

**Attachment A** – Draft Resolution Zone Change #627

Final Resolution 12-\_\_\_\_\_

A RESOLUTION TO AMEND THE UNIFIED ZONING REGULATIONS  
FOR THE CITY OF BILLINGS AND YELLOWSTONE COUNTY  
JURISDICTIONAL AREA BY REVISING SECTION 27-201 –  
DEFINITIONS, ADOPT THE REVISIONS AS AN AMENDMENT TO  
THE ZONING REGULATIONS.

WHEREAS, pursuant to Title 76, Chapter 2, Montana Code Annotated, the Board of County Commissioners of Yellowstone County, Montana, held a public hearing and adopted a resolution of intent on the 29<sup>th</sup> day of March, 2012, on the following proposed amendments and additions to the City of Billings – Yellowstone County Unified Zoning Regulations.

**Section 1.** That the Unified Zoning Regulations for the City of Billings and Yellowstone County Jurisdictional Area be amended by revising Section 27-201 to delete language and add new language as follows:

**COMMUNITY RESIDENTIAL FACILITIES:**

- (1) **ADULT FOSTER FAMILY CARE HOME:** A private home licensed by the Montana Department of ~~Family Services~~ Public Health and Human Services owned by one (1) or more persons eighteen (18) years of age or older which offers light personal care or custodial care to disabled adults who are not related to the owner by blood or marriage or which offers light personal care or custodial care to aged persons. The number of aged persons or disabled adults in an adult foster family care home may total no more than four (4).
- (2) **COMMUNITY GROUP HOME:** A family oriented residence or home licensed by the appropriate state agency designed to provide residential services and facilities for developmentally, severely disabled or mentally disabled persons, but does not provide skilled or intermediate nursing care.
- (3) **HALFWAY HOUSE:** A place operated in accordance with the regulations of the Montana Department of Public Health and Human Services ~~Health and Environmental Sciences~~ for the rehabilitation of alcohol or drug dependent persons.
- (4) **YOUTH FOSTER HOME:** A youth care facility licensed by the Montana Department of Public Health and Human Services ~~Family Services~~ in which substitute care is provided to one (1) to six (6) foster children or youths, other than the foster parents' own children, stepchildren or wards.
- (5) **YOUTH GROUP HOME:** A youth care facility licensed by the Montana Department of Public Health and Human Services ~~Family Services~~ in which substitute care is provided to seven (7) to twelve (12) children or youth.
- (6) **ASSISTED LIVING FACILITY:** An assisted living facility licensed by the Montana Department of Public Health and Human Services in a congregate residential setting that provides or coordinates personal care, 24-hour supervision

and assistance, both scheduled and unscheduled, and activities and health-related services for persons 18 years old or older.

WHEREAS, the Board of County Commissioner received and considered the recommendations of the City/County Planning staff and the Yellowstone County Zoning Commission on the proposed amendment and additions.

NOW, THERFORE, BE IT RESOLVED that it is the intent of the Board of County Commissioners that the above-described amendment to the Unified Zoning Regulations for the City of Billings and Yellowstone County Jurisdictional Area be adopted.

PASSED AND ADOPTED by the Board of County Commissioners of Yellowstone County, Montana, this 1<sup>st</sup> day of May, 2012.

BOARD OF COUNTY COMMISSIONERS  
YELLOWSTONE COUNTY, MONTANA

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John Ostlund, Chairman

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James E. Reno, Member

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Bill Kennedy, Member

(SEAL)  
ATTEST:

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Jeff Martin  
Clerk and Recorder